

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MS

OPTIONAL RETIREMENT PLAN

PLAN DOCUMENT

February 1, 2009

**OPTIONAL RETIREMENT PLAN
FOR
INSTITUTIONS OF HIGHER LEARNING
IN THE STATE OF MISSISSIPPI**

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ARTICLE I
ESTABLISHMENT OF PLAN AND TRUST

1.1 Establishment of Plan. House Bill No. 1070, enacted by the Legislature of the State of Mississippi, established the Optional Retirement Plan (the “Plan”) as of July 1, 1990.

This Plan document sets forth the provisions of this Defined Contribution (Money Purchase) Retirement Plan, as defined in Section 2.8, and which is a governmental plan, as defined in Internal Revenue Code Section 414(d) (~~the~~ “Code” or “Code Section”) and establishes a Trust for the Plan Assets. The Plan is intended to be a qualified plan under Code Section 401(a).

The Plan and Trust are established for the exclusive benefit of Participants and their Beneficiaries. Consistent with Code Section 401(a)(2), no amount held under the Plan will ever inure to the benefit of the Plan Sponsor, any Institution, or any successor of any of them, and all Plan investments and amounts will be held for the exclusive purpose of providing benefits to the Plan’s Participants and their Beneficiaries. Notwithstanding anything in the Plan to the contrary, it will be impossible at any time before the satisfaction of all liabilities to Participants and Beneficiaries for any part of the Plan assets to be used for or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries, except that payment of taxes and administration expenses may be made from the Plan assets as provided by the Plan or permitted by Applicable law.

Plan contributions are invested, at the direction of each participant, in one or more funding vehicles available to Participants under the Plan. Required Participant Plan eContributions are designated “picked-up” by the Institution so as not to be included in

Participants' gross income for federal tax purposes as provided by Code Section 414(h)(2).

This Plan is being amended and restated in its entirety effective ~~January 1, 2002~~ February 1, 2009.

ARTICLE II
DEFINITIONS

- 2.1 Application of Definitions. The words and phrases defined in this Article have the following meanings throughout this Plan document.
- 2.2 Accumulation Account. “Accumulation Account” means the separate account established for each Participant to which will be credited all Plan contributions, less expense charges, plus earnings thereon.
- 2.3 Annual Additions. “Annual Additions” means the sum of the following amount credited to a participant's Accumulation Account for the Limitation Year: (a) ~~required contributions made by the Institution and employee~~ **Institution Plan Contributions**; (b) **Participant Plan Contributions**; (c) all nondeductible employee contributions; and ~~(ed)~~ forfeitures; however, this Plan does not accept nondeductible employee contributions or provide for forfeitures.
- 2.4 Beneficiary. “Beneficiary” means the individual, institution, trustee, or estate designated by the Participant to receive benefits or otherwise entitled to receive benefits that may become payable hereunder after the death of such Participant.
- 2.5 Board. “Board” means the Board of Trustees of the Public Employees' Retirement System of Mississippi.
- 2.6 Break ~~I~~in Service. “Break ~~I~~in Service” means a valid break which shall be of the prior contract length or one year, whichever is greater, when there is no contribution to PERS and the Eligible Employee was not in a PERS-covered position.
- 2.7 Code. “Code” means the Internal Revenue Code of 1986, as amended. Reference to a specific ~~section of the Code~~ **Section** includes not only the section but any comparable section or sections of any future legislation that amends, supplements, or supersedes the section.

- 2.8 Code Section 401(a) Defined Contribution (Money Purchase) Retirement Plan. A “Code Section 401(a) Defined Contribution (Money Purchase) Retirement Plan” means a plan that provides for a separate account for each Participant and benefits based solely on the amounts of vested Plan contributions to the Participant's Accumulation Account(s) and earnings thereon and that meets the requirements of Code Section 401(a). All benefits under the Plan are fully funded and are provided solely through the funding vehicles selected by the Participant; therefore, benefits are not subject to, nor covered by, federal plan termination insurance.
- 2.9 Compensation. “Compensation” means the full amount earned **during a fiscal year by an employee, including any maintenance furnished not to exceed the employee compensation limit set pursuant to Section 401 (a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service.** ~~by an Employee for a given pay period, including any maintenance furnished, up to the maximum annual reportable earnings as provided under the laws of the MS Public Employees’ Retirement System (MCA Section 25-11-103(k)) paid to a Participant during the taxable year ending with or within the Plan year which is required to be reported as wages on the Participant's Form W-2 and~~ **Such amount** shall also include compensation which is not currently includable in the Participant's gross income by reason of application of Code Sections 125, 403(b), 414(h)(2), or 457.
- 2.10 Date of Employment or Reemployment. “Date of Employment or Reemployment” means the effective date of the appointment on which compensation begins for an Employee in an ORP eligible position. ~~For all other employees, the date of employment or reemployment is the first day upon which an hour of service for performance of his or her duties is completed.~~

2.11 Effective Date. “Effective Date” means July 1, 1990, which is the effective date of the Plan.

2.12 Eligible Employee. “Eligible Employee” means any Employee of ~~the~~ **an** Institution who is appointed or employed on or after July 1, 1990, and who holds a position as defined herein and is eligible for membership in the Public Employees’ Retirement System of Mississippi (sometimes hereafter referred to as PERS).

Teaching positions include;

- (a) ~~a~~**All** persons whose specific assignments customarily include conducting instruction, research or public service as a principal activity (or activities), and who hold academic-rank titles of professor, associate professor, assistant professor, instructor, lecturer, and/or research scientist.
- (b) Employees hired on or after August 1, 1998, as librarians with academic rank as well as intercollegiate coaches, with or without academic rank; ~~shall be eligible to participate in the Optional Retirement Plan.~~
- (c) Employees hired on or after July 1, 2001, in the following categories ~~shall be allowed to participate in the Plan:~~
 - (~~a~~**1**) an intern or resident in training at the University of Mississippi Medical Center or the College of Veterinary Medicine at Mississippi State University under a teaching program at such institution, ~~or~~
 - (~~b~~**2**) a post doctoral assistant/fellow at any Institution, or
 - (~~c~~**3**) a research scientist with or without academic rank whose specific assignments customarily include conducting research at any Institution.
- (d) ~~The teaching category includes d~~**Deans**, ~~as well as~~ associate deans, assistant deans, and executive officers of academic departments (chairmen, head or the equivalent) if their principal activity is instructional. ~~The teaching category does~~
Teaching Positions do not include student teachers or research assistants.

Administrative ~~f~~**Faculty Positions** includes persons whose assignments require primary (and major) responsibility for management of the Institution or a customarily recognized department. Assignments require the performance of work directly related to

management policies or general business operations of the Institution, department, or subdivision. It is assumed that assignments in this category customarily and regularly require the incumbent to exercise discretion and independent judgment and to direct the work of others. The administrative faculty category is limited to officers holding such titles as president, vice president, and dean as well as officers subordinate to any of these administrators with such titles as associate dean, assistant dean, or executive officer of academic departments, (chairmen, head or the equivalent) if their principal activity is administrative. Employees hired on or after August 1, 1998, as administrators with budgetary authority shall be ~~eligible to participate in the Optional Retirement Plan~~ **shall be deemed to hold Administrative Faculty Positions.**

- 2.13 Employee. “Employee” means any person employed by the Institution as a common law employee.
- 2.14 Fund Sponsor. “Fund Sponsor” means a life insurance company, **mutual fund company, or other company offering similar investments**, licensed to do business in the State of Mississippi, or a subsidiary of, or a company affiliated with, or under common management with, such a life insurance company that provides funding vehicles available to participants under this Plan as designated by the Board.
- 2.15 Funding Vehicles. “Funding Vehicles” means tax-deferred annuities, fixed or variable in nature or a combination thereof, **mutual fund shares, or other similar investment products approved by the Board**, issued for the purpose of funding accrued benefits under this Plan.
- 2.16 Institution. “Institution” means any of the State Institutions of Higher Learning included in **Miss. Code Ann.** Section 37-101-1, ~~Mississippi Code of~~ **(1972 as amended)**, namely:
- Alcorn State University
 - Delta State University
 - Jackson State University
 - Mississippi State University
 - Mississippi University for Women

Mississippi Valley State University

University of Mississippi

University of Mississippi Medical Center

University of Southern Mississippi

Gulf Coast Research Laboratory

Any other of like kind which may hereafter be
established by the State

- 2.17 Institution Plan Contributions. “Institution Plan Contributions” means contributions by the Institutions under this Plan, as required by Article IV.
- 2.18 Limitation Year. “Limitation Year” means the period beginning on July 1 of each year and ending on June 30 of the next succeeding year.
- 2.19 Normal Retirement Age. “Normal Retirement Age” is age 60 provided ~~the~~ **a** Participant **hired before July 1, 2007**, has completed four (4) or more full years of participation in the Mississippi Optional Retirement Plan, **or age 60 provided a Participant hired on or after July 1, 2007, has completed eight (8) or more full years of participation in the Mississippi Optional Retirement Plan**, or when ~~the~~ **a** Participant has completed 25 full years of participation in Mississippi Optional Retirement Plan regardless of age or as otherwise provided in Miss. Code Ann. Section 25-11-111 **(1972 as amended)** ~~as amended from time to time~~.
- 2.20 Participant. “Participant” means any Employee of the Institution who participates in the Plan in accordance with Article III.
- 2.21 Participant Plan Contributions. “Participant Plan Contributions” means the contributions by a Participant under this Plan, as required by Article IV. Participant Plan **e**Contributions are designated by the Institution as being made by the Institution in lieu of Plan contributions by the Participant. Furthermore, the “pick-up” amounts cannot be received directly by the participants in accordance with Code Section 414(h)(2).

- 2.22 Plan. “Plan” means the Optional Retirement Plan for Institutions of Higher Learning in the State of Mississippi as contained herein or as duly amended.
- 2.23 Plan Contributions. “Plan Contributions” means contributions by the Institution and the Participant under this Plan as required by Article IV.
- 2.24 Plan Entry Date. “Plan Entry Date” means the later of the effective date of the Plan or the date on which an Employee becomes an Eligible Employee.
- 2.25 Plan Year. “Plan Year” means the 12 consecutive month period beginning on July 1 and ending on June 30.
- 2.26 Termination of Employment. “Termination of Employment” means the complete severance of employment by resignation, dismissal, discharge, or retirement.
- 2.27 Trust. “Trust” means and refers to the legal entity and the legal relationship created by Article 1.1 and pursuant to Article XII. Consistent with Code Section 401(a)(2), the Trust must be solely for purposes of the Plan and consistent with Article 1.1.
- 2.28 Trustee. “Trustee” means the Board of Trustees of the Mississippi Public Employees’ Retirement System.
- 2.29 Years of Participation. “Years of Participation” means any year of service after participation in the Plan begins and during which Institution and Participant contributions are made, for a period of not less than the full school year or the full fiscal year as applicable for the position.

ARTICLE III

ELIGIBILITY FOR PARTICIPATION

- 3.1 Participation. In lieu of participation in the Public Employees' Retirement System of Mississippi (PERS), Eligible Employees may elect to begin participation in this Plan on the Plan Entry Date. Such elections, which are irrevocable, must be made no later than 30 days following date of initial employment.

Any person electing to participate in the Plan shall be ineligible for membership in PERS so long as he or she is employed in a position for which the Plan is available.

A Participant transferred or reclassified to a position that does not qualify for participation in this Plan will cease to participate in the Plan.

Where an Employee covered under PERS in a position other than one as defined under Section 2.12 of the Plan is employed by the Institutions ~~of Higher Learning~~ after July 1, 1990, in an ORP-eligible position, such Employee would be entitled to the option to elect to join the Optional Retirement Plan.

An Eligible Employee covered under PERS who terminates employment with an Institution and who is reemployed by an Institution after a valid Break in Service as defined in Section 2.6 of the Plan may elect to participate in the Plan, provided the ~~member~~ **eligible employee** has not retired from the Public Employees' Retirement System of Mississippi.

- 3.2 Notification. The Institution will notify each Eligible Employee when participation in the Plan begins. Each Participant is entitled to the benefits and is bound by all of the terms, provisions, and conditions of this Plan, including any and all amendments which from time to time may be adopted, including the terms, provisions and conditions of any contract and/or certificate under the Plan.

3.3 Reemployment. An Eligible Employee who is reemployed by the Institution after a valid ~~termination and separation from~~ Break in Service will be eligible for participation upon meeting the participation requirements set forth in Section 3.1. However, ~~Once~~ an Eligible Employee has irrevocably elected to participate in the Plan, the Eligible Employee must once again participate in the Plan upon any subsequent reemployment in a ~~qualifying position~~ Teaching Position or an Administrative Faculty Position. Moreover, any Eligible Employee drawing a monthly retirement allowance from the Public Employees' Retirement System of Mississippi, who is subsequently employed in a Teaching Position or an Administrative Faculty Position ~~or an ORP-eligible position~~, must comply with the reemployment limitations as they may be amended from time to time as set forth in ~~MCA~~ Miss. Code Ann. Section 25-11-127 (1972 as amended), unless such retirement allowance is terminated and the Employee returns to covered employment.

3.4 Enrollment in Plan. To participate in this Plan, an Eligible Employee initially employed on or after July 1, 1990, shall complete and return to the employing Institution within thirty (30) days of the later of (a) entry into employment, or (b) the effective date of the Plan, (1) PERS Form 4E ORP Election Form, (2) PERS Form 45 Vendor Selection Form and (3) the appropriate enrollment form(s) for the Fund Sponsor(s) and funding vehicle(s) selected. If an Eligible Employee does not return the appropriate Election Form and Vendor Selection Form to the employer within 30 days, he or she shall become a member of the Public Employees' Retirement System of Mississippi (PERS) in accordance with ~~Article 3, Chapter 11 of Title 25, Mississippi Code of 1972, as amended~~ Miss. Code Ann. Section 25-11-101 et seq. (1972 as amended).

An election to participate in the ~~ORP~~ Plan shall be irrevocable. The election shall be in writing and filed with the employing Institution, or as otherwise provided by the Board of Trustees of the Public Employees' Retirement System.

3.5 Cessation of Active Participation. A Participant shall no longer continue to contribute to the Plan if:

- (a) he or she assumes a position in state service other than as an Employee of a State Institution of Higher Learning;
- (b) he or she is retired or ~~separated~~ **terminated** from employment with the **Institution** ~~State Institutions of Higher Learning~~;
- (c) he or she is transferred or reclassified to a position that does not qualify for participation in this Plan; or
- (d) the Plan is terminated.

Where a Participant in the Optional Retirement Plan accepts a position that is not eligible for the Optional Retirement Plan, that individual's participation in the Optional Retirement Plan ~~would~~ **will** be suspended during the period in which the individual occupies a position for which participation in the Optional Retirement Plan is not available. The individual's participation in the Optional Retirement Plan would recommence when the individual again occupies a position for which participation in the Optional Retirement Plan is available by virtue of the election made at the time of initial employment.

ARTICLE IV

PLAN CONTRIBUTIONS

- 4.1 Plan Contributions. The Institution will make ~~Institution~~ Plan ~~e~~Contributions ~~on a monthly basis as provided by Section 6, H.B. No. 1070, Laws of 1990, or as the same may be hereafter amended, monthly~~ during years of participation in accordance with the following schedule except as the same may hereafter be changed by statute or termination of the Plan:

Plan Contributions as a Percentage of Compensation

<u>By the Participant</u>	<u>By the Institution</u>	<u>Total</u>
7.25%	9.75 11.85%	17.00 19.10%

Plan Contributions as Credited to Member's Account

<u>By the Participant</u>	<u>By the Institution</u>	<u>Total</u>
7.25%	7.25 9.35%	14.50 16.60%

The Participant's contribution of 7.25% of compensation, which is "picked-up" by the Institution, shall be credited to the Participant's account. The Institution shall contribute ~~7.25~~ 9.35% of the Participant's compensation to be credited to the Participant's account.

In addition, the Institution shall contribute 2.50% of the Participant's compensation to PERS for application to the accrued liability contribution fund.

In no event will compensation taken into account under the Plan exceed the limit of Code Section 401(a)(17) as such amount may be adjusted by the Secretary of Treasury from time to time.

All Plan contributions are fully vested and nonforfeitable. Plan contributions during educational, maternity and sick leave are provisional on the continuation of salary or compensation by the employing Institution.

4.1 (a) Contributions during Qualified Military Service

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with ~~Code~~ Section 414(u)(5) ~~of the Internal Revenue Code~~. A Participant shall be allowed to make Participant Plan ~~e~~Contributions, on an after-tax basis, for each year of Qualified Military Service in any amount up to the maximum Participant contributions the Participant would have been eligible to contribute had he not been in Qualified Military Service based on his compensation as herein defined, provided such Participant entered such Qualified Military Service directly from the employ of the Institution and was reemployed by the Institution immediately following discharge from such Qualified Military Service. The Participant shall be required to contribute such make-up Participant Plan ~~e~~Contributions during the period which begins on the date of the Participant's reemployment with the Institution and not exceeding three (3) times the Participant's Qualified Military Service; provided however, that in no event shall such period exceed ~~fifteen (15)~~ ~~five (5)~~ years.

If the Participant makes the required Participant Plan contribution as noted above, an Institution Plan ~~e~~Contribution shall be made for any eligible Participant for each year of Qualified Military Service in an amount equal to the amount the Participant would have been credited had he not been in Qualified Military Service based on his compensation as herein defined.

A Participant who is in Qualified Military Service shall be treated as receiving compensation during such period of Qualified Military Service equal to the compensation the Participant would have received during such period if the Participant were not in

Qualified Military Service, determined based on the rate of pay the Participant would have received from the Institution but for absence during the period of Qualified Military Service.

Any Institution Plan ~~e~~CContributions made pursuant to this Section shall not be subject to any otherwise applicable limitations contained in ~~IRC~~ Code Section 404(a), 402(g), or 415 with respect to the year in which the Institution Plan ~~e~~CContributions are made; however, such Institution Plan ~~e~~CContributions shall be subject to such limitations with respect to the year to which the Institution Plan cContributions relate.

Qualified Military Service means any service in the uniformed services (as defined in Chapter 43, Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such services.

- 4.2 Allocation of Plan Contributions. Plan contributions to the Participant's account shall be forwarded by the Institution to the Fund Sponsor of the funding vehicle(s) selected by a Participant and may be allocated by the Participant to one or more funding vehicles in whole-number percentages. At least as frequently as once a month a Participant may change his or her allocation of future Plan contributions to such funding vehicle(s) of a Fund Sponsor.

A Participant may direct contributions to more than one Fund Sponsor. A Participant may change Fund Sponsors quarterly, and such changes are effective January 1, April 1, July 1, and October 1 of each year if the correct form is received by the date specified by the Institution.

- 4.3 Statements. The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its books and records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment which is made for him or her and will deliver a copy of the statement to the appropriate Fund Sponsor(s) with the contributions payment.

- 4.4 Record Maintenance . Records for each Participant under this Plan are maintained on a calendar year basis. At least once a quarter the Fund Sponsor(s) will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of the end of that current quarter. Similar reports or illustrations may be obtained by a Participant upon ~~Termination of e~~Employment or at any other time by writing directly to the Fund Sponsor(s).
- 4.5 Limitations. Notwithstanding anything to the contrary contained in this Plan, the obligation of the Institution to make ~~Institution~~ Plan ~~e~~Contributions is subject to the provisions of Article X relating to the amendment and termination of the Plan, provided that no amendment or termination will affect any obligation of the Institution to make ~~Institution~~ Plan ~~e~~Contributions with respect to ~~e~~Compensation earned by Participants prior to the date of amendment or termination.
- 4.6 No Reversion. All contributions and earnings thereon credited to the Plan and/or Participants' accounts shall be irrevocable except as provided herein, and may only be used for the exclusive benefit of the Participants, former Participants, and their spouses or ~~B~~Beneficiaries. Under no circumstances or conditions will any contribution of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, in the event that incorrect or erroneous Plan contributions are made by the Institution by mistake, these Plan contributions will be returned to the Institution within 30 days after notification of the error.
- 4.7 Maximum Contribution. Notwithstanding anything contained in this Plan document to the contrary, the total annual additions made on behalf of any Participant for any year will not exceed the amount permitted under ~~Code~~ Section 415. ~~of the Code~~. Notwithstanding the foregoing, the otherwise permissible annual contributions for any Participant under this Plan may be further reduced to the extent necessary to prevent disqualification of the Plan under ~~Code~~ Section 415. ~~of the Code~~.

If the annual additions exceed the limitations, the excess amounts will be held unallocated in a suspense account and will be applied to reduce further contributions by the Institution to the Plan.

If the limitations are exceeded because the Participant is also participating in another Plan required to be aggregated with this Plan for the purposes of **Code** Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the ~~p~~**P**articipant from all plans. If the reduction is under this Plan, the Institution will advise affected ~~p~~**P**articipants of any additional limitation on their annual contributions required by this paragraph.

ARTICLE V

FUND SPONSORS/FUNDING VEHICLES

- 5.1 Fund Sponsors/Funding Vehicles. Plan contributions are invested in one or more ~~f~~Funding ~~v~~Vehicles available to Participants under this Plan.
- 5.2 Fund Transfers. Subject to a funding vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the ~~a~~Accumulation ~~a~~Account(s), a Participant may specify that a part or all of his or her ~~a~~Accumulation ~~a~~Account in one ~~f~~Funding ~~v~~Vehicle may be transferred to another ~~f~~Funding ~~v~~Vehicle(s) of the Fund Sponsor or the ~~f~~Funding ~~v~~Vehicle(s) of another Fund Sponsor. Transfers between Fund Sponsors are subject to each Fund Sponsor's rules for such transfers.

ARTICLE VI

VESTING

- 6.1 Participant Plan Contributions. Amounts attributable to Participant Plan eContributions shall at all times be nonforfeitable.
- 6.2 Institution Plan Contributions. Amounts credited to the member account derived from ~~employer contributions~~ **Institution Plan Contributions** shall be nonforfeitable when such Institution Plan eContributions are made.

ARTICLE VII

BENEFITS

- 7.1 Retirement Benefits. Following attainment of Normal Retirement Date or other ~~Termination of e~~Employment at any age and subject to any applicable penalties and tax, a Participant may elect to receive benefits under any of the options set forth in ~~Section 7.4 and in~~ the contracts between the Fund Sponsor(s) and ~~p~~Participant and/or the ~~Institution~~ ~~Trustee~~. In no case shall any distribution be made prior to ~~Termination of e~~Employment.
- 7.2 Death and Disability Benefits. In the event a Participant becomes totally and permanently disabled or dies prior to commencement of retirement benefit payments, the full current value of the vested amount in the ~~a~~Accumulation ~~a~~Account(s) is then payable to the Participant or to the Participant's ~~b~~Beneficiary or ~~b~~Beneficiaries as named by the Participant, under one of the options offered by the Fund Sponsor(s). In no case shall any distribution be made prior to ~~Termination of e~~Employment.
- 7.3 Application for Benefits. Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor(s). Benefits provided by ~~f~~Funding ~~v~~Vehicles or contract(s) to which Plan contributions have been applied will be payable by the Fund Sponsor(s) upon receipt of an application for benefits, and applicable supporting documentation, which the Fund Sponsor(s) determines to be in good order. The necessary forms will be provided to the Participant, the surviving spouse, or the ~~b~~Beneficiary by the Fund Sponsor(s). A representative of the ~~Board of Trustees as Administrator of the Plan~~ ~~Institution~~, or its designee, must sign the requisite form for all distributions of funds for the payment of benefits from the Plan, including rollover distributions, surrenders, or other forms of distribution/payment.

7.4 Distribution Requirements. The requirements of this Section apply to any distribution of a ~~p~~Participant's ~~a~~Accumulation ~~a~~Account(s). Such distributions will in all cases be made in accordance with a good faith interpretation of Code Section 401(a)(9).

- (a) Limits on Settlement Options. Distributions may only be made over one of the following periods (or a combination thereof):
- i) The life of the ~~p~~Participant,
 - ii) The life of the ~~p~~Participant and a designated ~~b~~Beneficiary, or
 - iii) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and the designated ~~b~~Beneficiary, or
 - iv) Lump sum, subject to provision of applicable ~~f~~Funding ~~v~~Vehicle(s), or
 - v) Any other distribution set forth in the contracts between the Fund Sponsor(s) and ~~p~~Participant and/or the ~~Institution~~ Trustee.

Notwithstanding anything contained herein to the contrary, the Plan shall in all events commence distribution of the interest of each Participant in accordance with this section not later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 ½), or in the calendar year in which he retires, which ever is later, but in all instances distribution shall occur in accordance with a good faith interpretation of ~~IRC~~ Code Section 401(a)(9), including the minimum distribution incidental death benefit requirements of ~~IRC~~ Treasury Regulation 1.401(a)(9)-2. The life expectancy of an Employee and the Employee's spouse (other than for a life annuity) may be redetermined annually at the Employee's election. If a distribution is required to begin according to Section 7.4(a) and the Participant has not filed a claim by the date that is sixty (60) days before the Participant's required beginning date as required in Code Section 401(a)(9), the Fund Sponsor shall direct payment according to the automatic payout option provided by the applicable Funding Vehicle(s), or, to the extent not so provided, as a lump sum distribution.

- (b) Death Distribution Provisions. Upon death of the Participant, the following distribution provisions will take effect:
- i) If the Participant dies after distribution of his or her vested ~~a~~Accumulation ~~a~~Account(s) has begun, the remaining portion of the ~~a~~Accumulation ~~a~~Account will continue to be distributed at least as rapidly as under the method of distribution being used prior to the participant's death.
 - ii) If the Participant dies before distribution of his or her ~~a~~Accumulation ~~a~~Account(s) begins, the Participant's entire ~~a~~Accumulation ~~a~~Account will be distributed no later than five years after the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:
 - (1) If any portion of the Participant's ~~a~~Accumulation ~~a~~Account(s) is payable to a designated ~~b~~Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated ~~b~~Beneficiary beginning no later than one year after the Participant's death.
 - (2) If the designated ~~b~~Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above must not be later than the date on which the Participant would have attained age 70 1/2, and if the spouse dies before payments begin, subsequent distributions will be made as if the spouse had been the Participant.

- (3) If a distribution is required to begin to a Beneficiary and the Beneficiary has not filed a claim by the date that is sixty (60) days before the date required by Code Section 401(a)(9), the Fund Sponsor shall direct payment according to the automatic payout option provided by the applicable Funding Vehicle(s), or, to the extent not so provided, as a lump sum distribution.

7.5 Eligibility for Health Insurance Coverage at Retirement. To the extent a Participant otherwise meets the State and School Employees' Life and Health Insurance Plan's eligibility requirements to participate in such plan as a retiree of a Mississippi retirement plan, retirees of the ~~Optional Retirement~~ Plan are eligible to continue participation in the State and School Employees' Life and Health Insurance Plan under the same terms and conditions as retirees of the Public Employees' Retirement System of Mississippi.

7.6 Effect of Unused Leave at Retirement or Termination of Employment. If, at retirement or ~~Termination of e~~Employment, a Participant in the ~~Optional Retirement~~ Plan has unused leave, then the Participant may be paid for any such unused leave to the extent allowed by ~~state~~ law up to the maximum annual reportable earnings ~~set pursuant to Code Section 401(a)(17) for the calendar year in which the fiscal year begins and proportionately for less than one(1) year of service.~~ ~~as provided under the laws of the MS Public Employees' Retirement System (MCA Section 25-11-103(k)) and proportionately for less than one year, with a~~ Appropriate Institution and Participant Plan ~~e~~Contributions ~~shall be~~ made to the Plan for such lump sum payment of unused leave in accordance with ~~MCA~~ Miss. Code Ann. Section 25-11-103(f) (1972 as amended). Where an employee has earned and has been reported for the maximum annual allowable earnings, he or she may be paid for up to 30 days of unused leave in accordance with the leave laws of the State of Mississippi; however, contributions shall not be withheld on any such lump sum leave payment resulting in the earnings for the year which exceed the

maximum allowable under the Plan for the year or a proportionate share of a year, whichever is applicable. Any remaining unused, uncompensated leave lapses upon retirement or Termination of Employment.

7.7 Direct Rollover

- (a) ~~Pursuant to the Unemployment Compensation Amendments of 1992 (Public Law 102-318 (UCA));~~ Consistent with Code Section 401(a)(31), a Participant shall be permitted to elect to have any “eligible rollover distribution” transferred directly to an “eligible retirement plan” specified by the Participant. The Plan provisions otherwise applicable to distributions continue to apply to the direct transfer option. The Participant shall, in the time and manner prescribed, specify the amount to be directly transferred and the “eligible retirement plan” to receive the transfer. Any portion of a distribution which is not transferred shall be distributed to the Participant. For purposes of this Section, the term “eligible rollover distribution” ~~means any distribution other than~~ means any distribution of the balance to the credit of the Participant other than: (a) a distribution of substantially equal periodic payments over life or life expectancy of the Participant (or joint life or joint life expectancies of the Participant and the designated beneficiary) or, (b) a distribution over a specified period certain of ten (10) years or more. Amounts required to be distributed under Code Section 401(a)(9) are not eligible rollover distributions. The direct transfer option described in subsection (a) applies only to eligible rollover distributions which would otherwise be includible in gross income if not transferred. For purposes of the direct rollover provision of this Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or

annuity described in ~~Code Sections~~ 408(a) or (b) ~~of the Code~~, or to a qualified defined contribution plan described in ~~Code Sections~~ 401(a) or 403(a) ~~of the Code~~, or on or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (b) For purposes of this Section, the term “eligible retirement plan” means an individual retirement account as described in Code Section 408(a), an individual retirement annuity as described in Code Section 408(b), an annuity plan as described in Code Section 403(a), or a qualified retirement plan as described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which accepts rollover distributions. Transfers under this section shall not be considered assignments under Section 8.1. An eligible retirement plan shall also mean an annuity contract described in ~~Code s~~Section 403(b) of the Code and an eligible plan under ~~Code s~~Section 457(b) ~~of the Code~~ which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. ~~Effective January 1, 2008, “eligible retirement plan” may also include a Roth IRA as described in Code Section 408(A).~~

The definition of “eligible retirement plan” shall also apply in the case of a distribution to a surviving spouse. The election described in subsection (a) also applies to the surviving spouse after the Participant’s death.

A distribution of all or any portion of the balance to the credit of a deceased member payable to a non-spouse Beneficiary is also qualified as an eligible rollover distribution. However, a non-spouse Beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an “inherited” individual retirement account or annuity.

7.8 Types of Rollovers Accepted

A. Direct Rollovers:

The Plan will accept a direct rollover of an eligible rollover distribution from:

- a) A qualified plan described in **Code** Section 401(a) or 403(a) ~~of the Code~~, including after-tax employee contributions,
- b) An annuity contract described in **Code** Section 403(b) ~~of the Code~~, excluding after-tax employee contributions,
- c) An eligible plan under **Code** Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

B. Participant Rollover Contributions from Other Plans:

The Plan will accept a Participant contribution from an eligible rollover distribution from:

- a) a qualified plan described in **Code** Section 401(a) or 403(a) ~~of the Code~~,
- b) an annuity contract described in **Code** Section 403(b) ~~of the Code~~,
- c) an eligible plan under **Code** Section 457(b) ~~of the Code~~ which is maintained by a state, political subdivision of a

state, or any agency or instrumentality of a state or political subdivision of a state.

C. Participant Rollover Contributions from IRAs.

The Plan will not accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in ~~Code s~~Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income. ~~The Plan will not accept Participant contributions from a Roth IRA described in Code Section 408A.~~

7.9 Other Benefits

No retirement benefit, death benefit or other benefit under the Optional Retirement Plan shall be paid by the State of Mississippi or a participating Institution, or the Board of Trustees of the Public Employees' Retirement System with respect to any Employee selecting and participating in the Optional Retirement Plan or with respect to any ~~h~~Beneficiary of that Employee. ~~Benefits shall be payable to Participants or their beneficiaries only by the applicable Contracts and funding vehicles established between the Fund Sponsor and the participant.~~ ~~The benefits payable to a Participant or his or her Beneficiary whose funds are invested with annuity providers shall be governed solely by the terms of the contracts of the issuing insurance company or companies. To the extent that a Participant has invested funds in mutual fund shares, the benefits shall be limited to the value of the shares in the Participant's account.~~

ARTICLE VIII

GENERAL PROVISIONS AND LIMITATIONS REGARDING BENEFITS

- 8.1 Nonalienation of Retirement Rights or Benefits. Annuity contracts issued under the Optional Retirement Plan, ~~account values invested in mutual fund shares, or other similar investment products,~~ and all rights thereto of a Participant in the ~~Optional Retirement~~ Plan shall be exempt from any state or municipal tax (except to the extent that state income tax is payable under Chapter 7, Title 27, Mississippi Code of 1972), shall be exempt from any levy and sale, garnishment, attachment, or any process whatsoever, and shall ~~not be un~~assignable.

ARTICLE IX
ADMINISTRATOR

- 9.1 Plan Administrator. This Plan shall be administered by the Board of Trustees of the Public Employees' Retirement System of Mississippi, hereinafter referred to as the "Board", located at 429 Mississippi Street, Jackson, Mississippi, 39201-1005 at (601) 359-3589.
- 9.2 Authority of the Board. The Board, which is the Administrator for purposes of the MCA Miss. Code Ann. Section 25-11-401 et. seq. (1972 as amended) and the Plan Administrator for purposes of the Code, has all the powers and authority expressly conferred upon it herein and further has the sole right to interpret and construe the Plan and to determine any disputes arising under it. In exercising these powers and authority, the Board will at all times exercise good faith, apply standards of uniform application and refrain from arbitrary action. The Board may employ attorneys, agents and accountants as it finds necessary or advisable to assist it in carrying out its duties. ~~The Board will be a "named fiduciary" as that term is defined in Section 401(a)(2) of the Act for purposes of determining eligibility.~~ The Board may designate a person or persons other than the Board to carry out any of its administrative powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 9.3 Designation of Executive Director. The Executive Director ~~is designated as the system head and~~ shall execute all documents, contracts, agreements, amendments, and any other document of this Plan for and on behalf of the Board, all as more fully set forth in the PERS Executive Director Standard Operating Procedures Manual.

ARTICLE X

AMENDMENT AND TERMINATION

- 10.1 Amendment and Termination. While it is expected that this Plan will continue indefinitely, the Board reserves the right at any time to amend, otherwise modify, or terminate the Plan or to discontinue any further contributions or payments under the Plan as authorized by the Legislature. In the event of a termination of the Plan or discontinuance of Plan contributions, the Board will notify all Participants of the termination. As of the date of complete or partial termination, all ~~a~~Accumulation ~~a~~Accounts will become nonforfeitable to the extent funded.
- 10.2 Limitation. Notwithstanding the provisions of Section 10.1, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any Plan contributions previously made under this Plan. However, Institution Plan ~~e~~Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan. In the event that ~~the vendor~~ a Fund Sponsor has funds as a result of an error, it shall pay to the Institution the amount found to be in error within 30 days.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan contributions are concerned. Any determination or recommendation by the Internal Revenue Service or the Board's counsel will be sufficient as to the necessity of the amendment.

ARTICLE XI

MISCELLANEOUS

- 11.1 Plan Non-contractual. Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing contained in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all Employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 11.2 Claim of Other Persons. The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm or corporation, any legal or equitable right against the Board, the **Trustee, an** Institution, their officers, employees, or directors, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 11.3 Governing Law. Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Mississippi.
- 11.4 Merger, Consolidation, or Transfers of Plan Assets. The Plan will not be merged or consolidated with any other Plan, nor will any of its assets or liabilities be transferred to another Plan, unless immediately after a merger, consolidation, or transfer of assets or liabilities, each Participant would receive a benefit under the Plan which is at least equal to the benefit he or she would have received immediately prior to a merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

11.5 Contracts. The terms of the contracts between the Fund Sponsor(s) and the Institution and/or Participants and any certificates issued to a Participant are a part of the Plan as if fully set forth in the Plan document and the provisions of each are incorporated by reference into the Plan. In cases where there is any inconsistency or ambiguity between the terms of the Plan and those of the contracts and certificates the terms of the contracts/certificates control.

11.6 Requests for Information and Other Claims Procedures. Requests for information concerning the annuity contracts, mutual fund shares, or other similar investment products, and their terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims and service of legal process may be directed in writing to the Fund Sponsor.

If a written request is denied, the Fund Sponsor shall within a reasonable period of time provide a written denial to the Participant. It will include the specific reasons for denial, the provisions of the contracts on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it will also include a description of any material which is needed to complete or perfect a claim and why such material is necessary. A Participant may request in writing a review of a claim denied by the Fund Sponsor and may review pertinent documents and submit issues and comments in writing. The Fund Sponsor shall provide in writing to the Participant a decision upon such request for review of a denied claim within 60 days of receipt of the request.

If special circumstances require a delay on the initial decision on a claim or a review of a denied claim, the Fund Sponsor will notify the Participant within 30 days of the date the claim was initially submitted or within 60 days of the date a review was requested. The notice will explain the reasons for the delay and when a decision can be expected.

ARTICLE XII

TRUST

- 12.1 Trust. A Trust is hereby established under State Law.
- 12.2 Adding Property to the Trust. The Trustee shall cause all Funding Vehicles applied for after the date that this restated Plan is adopted to be issued to or registered in the name of the Trustee for the purposes of this Trust.
- 12.3 Participant-directed Investment. In addition to (and not by limitation upon) the provisions, the Trustee hereby authorizes each Fund Sponsor to accept investment directions given by a Participant or Beneficiary as provided by the Plan. If any investment direction is not received in good order, the Fund Sponsor may, to the extent provided by the Funding Vehicle, hold any Contribution in cash, without liability for interest or investment gains of any kind, until completed proper instructions are received in good order.
- 12.4 Trustee Must Defend the Trust. The Trustee must defend the Trust in any action at law or in equity that asserts or alleges that the Trust is not a valid entity or is in any other way illegal or void or voidable. The Trustee is entitled to pay from or be reimbursed by the Trustee assets all of its actual expenses incurred relating to the defense of the Trust.
- 12.5 Trustee Must Hold Funding Vehicles. The Trustee must maintain ownership of the Funding Vehicles. To the extent of Funding Vehicles under a mutual fund, group trust, collective investment fund, or other pooled investment, the Trustee's participation (whether or not measured by shares or units) in the mutual fund, group trust, collective investment fund, or other pooled investment is the form of ownership. This section does not apply to those funds invested in individual annuity contracts prior to February 1, 2009.

The Trustee shall not invest any money or property of the Trustee other than under a Funding Vehicle approved by Board of Trustees of the Public Employees' Retirement System.

The Trustee delegates to the Fund Sponsor authority to exercise any of the Trustee's rights or powers under its respective Funding Vehicles. The Trustee shall oversee the Fund Sponsor's actions so as to have reasonable assurance that the Funding Vehicles are used according to the Plan and not for any improper purpose.

12.6 Trustee Investment Duties. The Trustee has the duty to select and monitor Fund Sponsors and Funding Vehicles in accordance with the standard of care described in Section 12.15. The Trustee shall not invest any money or property of the Trust other than under the Funding Vehicles as instructed by Participants or Beneficiaries. The Trustee has no duty to and shall not inquire into any Participant's or Beneficiary's investment direction. The Trustee shall not give any investment direction or instruction of any kind, except as instructed by the Participant or Beneficiary.

12.7 Trustee's Powers. Subject to the limitations stated by this Article XII, the Trustee has all powers provided by any applicable Mississippi statute and otherwise at law or in equity (including the common law), and has the following specified powers in addition to and not by limitation upon any such powers.

- (a) The Trustee may require any Person involved in the administration of the Plan, and any Person having any interest under the Plan, to furnish such certifications of facts as shall permit the Trustee to perform its duties under this Article XII or under any applicable law. The Trustee has power to make, execute, and deliver as Trustee any and all contracts, waivers, releases, or other instruments in writing and to do all other acts as Trustees that the Trustee considers necessary or appropriate in carrying out any duty or power under this Article XII or otherwise at law or in equity. The Trustee has power to adjust, settle, contest, compromise

and arbitrate any claims, debts, or damages due or owing to or from the Trust, and to sue, commence or defend any legal proceedings relating to the Trust.

- (b) Subject to the enabling statute, the Trustee has power to employ (at the expense of the Trust) suitable agents, accountants, attorneys, lawyers, legal assistants, consultants, and counsel of any kind; and to pay their fees or expenses and compensation out of the Trust assets. The Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action according to the opinion of its counsel.

12.8 Institution Sends Contributions. Each Institution sends contributions to the Fund Sponsor(s) to be invested under the Funding Vehicle(s). The Trustee shall not receive any Contributions to be invested in the Accumulation Account of each Participant.

12.9 Plan Accounting is Trust Accounting. Because this Article XII provides that the Trustee shall not receive Plan Contributions payable to the Participant's Accumulation Account, shall have no investment duties, shall not give investment instructions, and shall not pay Plan Distributions, the Trustee need not keep accounts of the Trust.

12.10 Plan Audits. At any time the Trustee may (but is not required to) engage an independent public accountant to examine the Plan's financial statements or internal control procedures. If the Plan Administrator engages an independent accountant, the Plan Administrator must require that such engagement provide that the examination be made according to generally accepted auditing principles (or according to agreed upon procedures that the Trustees approves in writing), and that the Trustee is entitled to rely upon the accountant's examination and opinion and all reports relating to the examination.

12.11 Action of Trustee. The Trustee may authorize any of its officers or employees to execute documents on its behalf.

- 12.12 Allocation of Responsibility. Any Person acting regarding the Trustee shall have only those specific powers, duties, responsibilities, and obligations specifically provided by this Article XII, or that are provided by the Plan or the extent that the Plan is not inconsistent with this Article XII. Each Person is responsible only for the proper exercise of his/her/its own powers, duties, responsibilities, and obligations, and any Person is not liable for any act or failure to act of another Person.
- 12.13 Expenses. The Trustee may pay from the Trust assets any actual expense (including, by example and not by limitation, actual fees of lawyers and legal assistants, accountants, auditors, proxy solicitors, or other consultants) reasonably incurred in performing services with respect to the Plan or the Trust. Without limiting the comprehensive effect of the foregoing, all of the provisions of the Plan concerning expenses are incorporated into and made a part of this Article XII by reference.
- 12.14 Indemnification. For any officer or employee of the Trustee, such Person's service with respect to the Trust shall be treated as official duties, and such person shall be entitled to Public officer immunity, relief from liability, and defense and indemnification to the same extent as provided for a government officer or employee in the conduct of his/her official duties.
- 12.15 Standard of Care. The Trustee shall discharge its limited duties under this Article XII with the diligence under the circumstances then prevailing that a prudent person acting as a ministerial trustee of a trust for which the trustee had no duties other than to maintain record title of the trust property would use in the conduct of a like trust with a like aim to hold the Funding Vehicle and any other money or property held for the purposes of the Plan solely as Plan assets for the purpose of investing Plan contributions and paying Plan distributions.

~~Employer Identification Number 64-6001557~~

~~Plan Number 002—~~

ARTICLE XIII

ADOPTION OF THE PLAN

13.1 As evidence of its adoption of the Plan, the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS) has caused this instrument to be signed by its authorized officer this ____ day of _____, _____, effective as of February 1, 2009, except as otherwise provided herein.

ATTEST:

PERS

By: _____ (SEAL)
(Title)